

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Revision of Part 22 and Part 90 of the
Commission's Rules to Facilitate Future
Development of Paging Systems

WT Docket No. 96-18

Implementation of Section 309(j)
of the Communications Act --
Competitive Bidding

PP Docket No. 93-253

COMMENTS OF THE JOINT PARTIES

Sunbelt Transmission Corporation and Snider Communications Corporation

(collectively the "Joint Parties), by their attorneys, hereby submit their comments on the Commission's Notice in the above captioned rulemaking proceeding.^{1/}

In the Notice the Commission proposes to auction paging spectrum on a Major Trading Area ("MTA") basis.^{2/} The Joint Parties submit that an auction is an unsuitable method of allocating fringe spectrum in an already mature industry. Many paging companies, such as the Joint Parties, are relatively small, regional companies that have business plans based on providing service to a limited geographical area. These companies have already built most of

^{1/} See Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Notice of Proposed Rulemaking, WT Docket No. 96-18, PP Docket No. 93-252 (released February 9, 1996) ("Notice"). Sunbelt Transmission Corporation and Snider Communications Corporation are family-owned and operated paging companies that have been providing paging service in the state of Arkansas since 1983.

^{2/} Notice at 4, 19. References to "paging spectrum" by the Joint Parties in these comments apply only to the paging spectrum at issue in the Notice, not to spectrum that may be used for paging by PCS or other types of spectrum holders.

their networks, but in many cases do not hold all of the licenses at the edges of their service territories because they were expanding their networks on a site-by-site basis. Now, under the Commission's auction proposal, these companies may never be able to completely build out their regions. While the Joint Parties believe that auctioning "new" spectrum such as PCS is an appropriate and efficient method of allocating spectrum, auctioning "old" spectrum that has been available for license for many years is inappropriate and inefficient. The Joint Parties urge the Commission not to auction paging spectrum, or, in the alternative, not to auction paging spectrum without allowing incumbent licensees to complete their networks outside of the auction process.

I. AUCTIONS ARE AN UNSUITABLE METHOD OF ALLOCATING REMAINING PAGING LICENSES.

As the Commission recognizes in the Notice, the paging industry is a mature industry that has been operating for almost 50 years.^{3/} Paging licenses have been available on a "first-come-first-serve" or mutually exclusive basis, and while all licenses in the major metropolitan and growth corridors of the country have been claimed for many years, paging licenses are still available for parts of rural America. The companies interested in these rural licenses often are small, family-owned and operated businesses, such as the Joint Parties, and these companies have been building out their service areas one site at a time by applying for available, non-mutually exclusive spectrum. No one else has made the commitment these companies have made to provide paging service in these areas. Yet if the Commission's MTA-auction proposal is adopted, two barriers will prevent these companies from completing their networks.

^{3/} Notice at 5.

The first barrier is that the proposed MTA license scope is inappropriate for many small companies. In some cases an MTA will cover a far greater area than a company wants to or can serve. In other cases the borders of an MTA will not match a company's business plan. While the Joint Parties support the Commission's proposal to license paging frequencies on a geographic rather than on a transmitter-by-transmitter basis,^{4/} the Commission should not impose a strict geographical licensing system on incumbent paging licensees. Rather, the Commission should allow incumbent paging licensees to apply for permission to aggregate their geographically contiguous licenses into one license that covers an entire area, and should allow license holders to add to the geographic scope of their licenses on a transmitter-by-transmitter basis.

The second barrier is using the auction process to license fringe paging spectrum. In prior auctions most companies have applied to bid in "all" markets when applying for the auctions for strategic reasons, and if a paging auction is held, it is unlikely that any market will not receive competing applications. Consequently, the Notice's assertion that in many instances "incumbents will not be subject to competing applications, because most likely no other applicant will be interested in applying for the geographic area given the extent of the incumbent presence"^{5/} is not likely to be correct. Small businesses like the Joint Parties will thus be faced with a choice of either bidding in the auction for spectrum that covers an area that may not meet their business plans simply to acquire the few licenses they need to complete their service areas or of abandoning their plans.

4/ Notice at 13.

5/ Notice at 33.

Businesses have relied on the Commission's current paging licensing process, and many small businesses could lose their financial backing if they are unable to complete their networks as planned. Auctioning spectrum that has been available for license for many years is unlikely to produce significant revenues and will harm small companies. The Commission should find that auctions are an inappropriate method of licensing remaining paging spectrum and should not adopt these proposals.

II. IF THE COMMISSION DOES ADOPT AUCTIONS FOR REMAINING PAGING SPECTRUM IT SHOULD DO SO ONLY AFTER ALLOWING INCUMBENT LICENSEES TO APPLY FOR A LIMITED NUMBER OF ADDITIONAL LICENSES NECESSARY TO COMPLETE THEIR NETWORKS.

If the Commission does adopt an auction licensing scheme for future paging licenses, it should do so only after allowing incumbent licensees to apply for a limited number of additional licenses necessary to complete their networks. For example, the Joint Parties intended to apply this year for additional licenses at four transmitter locations at the fringe of their service areas. If the Joint Parties had applied for these licenses on February 8, 1996, they could have received the licenses and completed their service territories. Because, however, the Joint Parties were following Commission policy against the "warehousing" of spectrum,^{6/} the Joint Parties did not apply for licenses before they were financially and organizationally ready to use those licenses. The Joint Parties and other similarly situated companies should not be penalized for following Commission policy by having their business plans destroyed by regulatory change. Therefore, if

^{6/} See, e.g., Amendment of Part 22 of the Commission's Rules to Delete Section 22.119 and Permit the Concurrent Use of Transmitters in Common Carrier and Non-Common Carrier Services, Notice of Proposed Rulemaking and Order, 9 FCC Rcd 2578, 2580 (1994) at ¶ 7 (asking for comment on appropriate safeguards to prevent warehousing of exclusively assigned frequencies if Section 22.119 is eliminated or modified).

the Commission does adopt an auction licensing scheme for paging, it should first allow incumbent licensees to apply for and receive a limited number of additional licenses for areas that are contiguous to their current service areas.

The Joint Parties propose that the Commission allow a window of time before any paging frequency auction during which incumbent licensees can apply for and receive licenses for new transmitter locations that are contiguous to their current service areas.^{7/} To prevent attempts to warehouse spectrum, the Commission could limit the number of new transmitter licenses each licensee can obtain during the window to 10 or less (a de minimis number when the total number of paging licenses under the current transmitter licensing scheme are considered). Only current licensees would be eligible to receive licenses during the window, and these licensees would only be permitted to acquire licenses for new transmitter locations that are geographically contiguous to their current licenses and that are on the same frequency as their current licenses.^{8/} Adoption of the Joint Parties' proposal would be in the public interest because it would allow many existing paging companies to complete their networks before the imposition of any MTA-based geographic licensing scheme, yet because of the de minimis number of licenses involved, would not significantly affect the auctionability of any MTA paging license.


^{7/} This proposal differs from the Commission's interim licensing proposal because it would allow incumbent licensees to add sites to their existing systems that expand the interference contour of the systems. See Notice at 65.

^{8/} If more than two current licensees apply for any one license, that license would not be awarded during the window. Instead, the license would be available only as part of whatever auction process the Commission implements to allocate remaining paging spectrum.

The Joint Parties agree with the Commission that it should promote continued growth and preserve vigorous competition in the paging industry.^{9/} Auctioning remaining paging frequency will not promote these Commission goals. Auctions are inappropriate for spectrum that has been available for licensing for many years, and auctions will do nothing more than prevent many small companies from providing paging service to rural America. The Joint Parties urge the Commission not to adopt the MTA-auction proposals in the Notice. In the alternative, if the MTA- auction proposals are adopted, the Commission should at least allow incumbent licensees to complete their networks outside of the auction process under the terms of the proposal outlined above.

Respectfully submitted,

SUNBELT TRANSMISSION CORPORATION
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^{9/} Notice at 4.